IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
February 11, 2009 Session

BETTY LOU GRAHAM v. WALLDORF PROPERTY MANAGEMENT, ET AL.

Appeal from the Chancery Court for Hamilton County
No. 07-1025 W. Frank Brown, III, Chancellor

No. E2008-00837-COA-R3-CV - Filed March 19, 2009

Betty Lou Graham ("Plaintiff") sued Walldorf Property Management and George Kangles ("Defendants") in the Chancery Court for Hamilton County, Tennessee. Defendants filed a motion for summary judgment alleging that Plaintiff lacked standing, that the applicable statute of limitations had expired, and that the case was barred by *res judicata* due to a prior suit in General Sessions Court. The Chancery Court granted Defendants summary judgment. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Case Remanded

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and J. STEVEN STAFFORD, J., joined.

Betty Lou Graham, Jasper, Tennessee, Pro se Appellant.

N. Mark Kinsman, Chattanooga, Tennessee, for the Appellees, Walldorf Property Management, Inc. and George Kangles.

OPINION

Background

In October of 2006, Plaintiff sued Defendants in the General Sessions Court for Hamilton County, Tennessee alleging fourteen claims with regard to condominium units Plaintiff owned at a complex operated by Lake Park Condominium Association, Inc. ("Lake Park"). Lake Park had entered into a management agreement for Walldorf Property Management, Inc. to manage the condominium property. George Kangles was the President of Walldorf Property Management, Inc. Defendants moved to dismiss Plaintiff's General Sessions suit based upon the expiration of the statute of limitations. By order entered February 20, 2007, the General Sessions Court granted partial summary judgment dismissing Plaintiff's claims numbered 1 through 13, finding and holding that the statute of limitations had run as to those claims.

Plaintiff's claim number 14 was the only surviving claim after the General Sessions Court granted summary judgment on claims 1 through 13. Plaintiff moved to transfer the case to Chancery Court and the General Sessions Court denied the motion. Plaintiff then moved to withdraw all of her allegations 1 through 14 without prejudice. The General Sessions Court dismissed the remaining claim, number 14, without prejudice on March 26, 2007.

On November 29, 2007, Plaintiff filed this suit against Defendants in the Chancery Court for Hamilton County, Tennessee alleging the same claims 1 through 13 from her General Sessions lawsuit. Plaintiff did not include claim number 14 in the Chancery Court complaint. Defendants filed a motion for summary judgment alleging that Plaintiff lacked standing, that the applicable statute of limitations had expired, and that Plaintiff's claims were barred by *res judicata* as a result of the General Sessions Court lawsuit. The Chancery Court held a hearing and then entered an order on March 20, 2008 finding and holding, *inter alia*:

> The Defendants have asked in their [Motion for Summary Judgment] that [Plaintiff's] Complaint be dismissed upon the legal doctrine known as *res judicata*. The Defendants contend that the Chancery lawsuit filed by [Plaintiff] contains the same allegations and contentions set forth in her previously-filed General Sessions Court lawsuit, No. 06GS10397. [Plaintiff] admitted that the allegations in paragraphs II-XIII in her Chancery Complaint were the same allegations in her General Sessions Court lawsuit. See [Plaintiff's] response to the Defendants' Statement of Undisputed Material Facts and her attachments.
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> * * *
>
> [Plaintiff] appears to dispute whether Judge Moon's order was a final order or not. She argued that Judge Sell dismissed without prejudice [Plaintiff's] General Sessions Court case. Thus, she had one year to refile her case. In order to answer [Plaintiff's] contention, we need to study General Sessions Court procedure.
>
> General Sessions Court procedure is governed by Tenn. Code Ann. § 16-15-714. That statute provides:

> **Pleadings and practice – General sessions courts. –**
> Practice and pleadings in the general sessions courts shall be as provided in this chapter and other provisions of law and private acts establishing such courts and local rules of practice not inconsistent with law.

Where a party believes a General Sessions Court Judge has erred, then that party has two options: file a Rule 60.02 motion or appeal. Tenn. Code Ann. § 16-15-702(b) provides:

> The provisions of Tennessee Rules of Civil Procedure, Rule 60.02, relative to mistakes, inadvertence, excusable neglect, fraud, and other similar reasons set out in that rule, shall apply to all courts of general sessions. A motion under the general sessions court's authority under Tennessee Rules of Civil Procedure, Rule 60.02 shall be filed within ten (10) days of the date of judgment. Once filed, the motion shall toll the ten-day period for seeking a de novo review in the circuit court until the determination of the motion is concluded. Thereafter, an appeal for de novo review in the circuit court shall be filed within ten (10) days of the general sessions court's ruling on the motion to relieve a party or the parties' legal representative from a final judgment, order or proceeding in the same manner as provided in Tennessee Rules of Civil Procedure, Rule 60.02.

The other alternative is to appeal the General Session Court Judge's order. Tenn. Code Ann. § 27-5-108(a)(1) (Supp. 2007) states:

> Any party may appeal from an adverse decision of the general sessions court to the circuit court of the county within a period of ten (10) days on complying with the provisions of this chapter.

Tennessee Code Annotated § 27-5-108(c) and § 16-15-729 both provide that a case appealed from General Sessions Court will be heard *de novo* in Circuit Court. Technically, [Plaintiff] did not appeal the dismissal of allegations 1-13 to Chancery Court. She waited approximately 8 months before filing a new lawsuit in Chancery Court. *Graves v. Kraft General Foods*, 45 S.W.3d 585 (Tenn. Ct. App.), *perm. app. denied* (2000) is authority for the proposition that Chancery Court does <u>not</u> have jurisdiction of appeals from General Sessions Court. Judge Farmer wrote:

> ["][A]fter reviewing this statute [Tenn Code Ann. § 27-5-108], it is clear to this court that a chancery court has not jurisdiction to hear an appeal from general sessions court."

Id. At [sic] 586.

As to the effect on a proper appeal, Judge Farmer wrote:

> [T]his statute is clear upon review that a party has ten days to appeal a general sessions judgment to a proper circuit court. Kraft filed their appeals with the chancery court, which had no subject matter jurisdiction to hear such appeals. As such, Kraft failed to timely file their appeals in a court with subject matter jurisdiction.

Id. at 588. Thus, Kraft lost its right to appeal. The Sessions Court order was final.

* * *

> The court is convinced that all Judge Sell's Order did was to voluntarily nonsuit count 14 of [Plaintiff's] case in General Sessions Court. That was the only part of her case that had not been dismissed with prejudice by Judge Moon on February 20, 2007.

* * *

> Thus, this case will be dismissed because it was not timely appealed from the General Sessions Court to the Circuit Court.

* * *

> The court has several thoughts. First, the court notes that [Plaintiff] did not allege her 14th claim in Sessions Court, the Horizontal Property claim, in her complaint filed herein on November 29, 2007. The court can only consider the claims contained in the complaint. References to the Horizontal Property Act in her Response or in oral argument are not sufficient to state a claim.

* * *

> Second, the court has noted [Plaintiff's] frustration that her claims were not heard on the merits in General Sessions Court. If a person has waited too long to file a lawsuit and if the claim (or some party thereof) is barred by the statute of limitations, then there is no hearing on the merits. The case (or parts thereof) is dismissed upon legal defenses before the merits of a lawsuit are ever reached.

Plaintiff appeals to this Court.

Discussion

Although Plaintiff raises three issues on appeal, the dispositive issue is whether the Chancery Court erred in granting summary judgment to Defendants.

Our Supreme Court has described the process for reviewing a trial court's grant of summary judgment as follows:

> The standards governing an appellate court's review of a motion for summary judgment are well settled. Since our inquiry involves purely a question of law, no presumption of correctness attaches to the lower court's judgment, and our task is confined to reviewing the record to determine whether the requirements of Tenn. R. Civ. P. 56 have been met. *See Hunter v. Brown*, 955 S.W.2d 49, 50-51 (Tenn. 1997); *Cowden v. Sovran Bank/Central South*, 816 S.W.2d 741, 744 (Tenn. 1991). Tennessee Rule of Civil Procedure 56.04 provides that summary judgment is appropriate where: (1) there is no genuine issue with regard to the material facts relevant to the claim or defense contained in the motion, *see Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993); and (2) the moving party is entitled to a judgment as a matter of law on the undisputed facts. *See Anderson v. Standard Register Co.*, 857 S.W.2d 555, 559 (Tenn. 1993). The moving party has the burden of proving that its motion satisfies these requirements. *See Downen v. Allstate Ins. Co.*, 811 S.W.2d 523, 524 (Tenn. 1991). When the party seeking summary judgment makes a properly supported motion, the burden shifts to the nonmoving party to set forth specific facts establishing the existence of disputed, material facts which must be resolved by the trier of fact. *See Byrd v. Hall*, 847 S.W.2d at 215.

Staples v. CBL & Assocs., Inc., 15 S.W.3d 83, 88 (Tenn. 2000).

The Chancery Court found and held, *inter alia*, that Defendants were entitled to summary judgment because: "[t]he doctrine of *res judicata* bars [Plaintiff] from relitigating the same issues in Chancery Court that she litigated, or could have litigated, in General Sessions Court." In *Lien v. Couch*, 993 S.W.2d 53 (Tenn. Ct. App. 1998), this Court discussed various aspects of the doctrine of *res judicata*. We stated:

> Res judicata is a claim preclusion doctrine that promotes finality in litigation. *See Moulton v. Ford Motor Co.*, 533 S.W.2d 295, 296 (Tenn. 1976); *Jordan v. Johns*, 168 Tenn. 525, 536-37, 79 S.W.2d 798, 802 (1935). It bars a second suit between the same parties or their privies on the same cause of action with respect to all the issues which were or could have been litigated in the former suit. *See Richardson v. Tennessee Bd. of Dentistry*, 913 S.W.2d 446, 459 (Tenn. 1995); *Collins v. Greene County Bank*, 916 S.W.2d 941, 945 (Tenn. Ct. App. 1995).

Parties asserting a res judicata defense must demonstrate that (1) a court of competent jurisdiction rendered the prior judgment, (2) the prior judgment was final and on the merits, (3) the same parties or their privies were involved in both proceedings, and (4) both proceedings involved the same cause of action. *See Lee v. Hall*, 790 S.W.2d 293, 294 (Tenn. Ct. App. 1990). A prior judgment or decree does not prohibit the later consideration of rights that had not accrued at the time of the earlier proceeding or the reexamination of the same question between the same parties when the facts have changed or new facts have occurred that have altered the parties' legal rights and relations. *See White v. White*, 876 S.W.2d 837, 839-40 (Tenn. 1994).

The principle of claim preclusion prevents parties from splitting their cause of action and requires parties to raise in a single lawsuit all the grounds for recovery arising from a single transaction or series of transactions that can be brought together. *See Bio-Technology Gen. Corp. v. Genentech, Inc.*, 80 F.3d 1553, 1563 (Fed. Cir. 1996); *Hawkins v. Dawn*, 208 Tenn. 544, 548, 347 S.W.2d 480, 481-82 (1961); *Vance v. Lancaster*, 4 Tenn. (3 Hayw.) 130, 132 (1816). The principle is subject to certain limitations, one of which is that it will not be applied if the initial forum did not have the power to award the full measure of relief sought in the later litigation. *See Davidson v. Capuano*, 792 F.2d 275, 279 (2d Cir. 1986); *Carris v. John R. Thomas & Assocs., P.C.*, 896 P.2d 522, 529-30 (Okla. 1995); *see also Rose v. Stalcup*, 731 S.W.2d 541, 542 (Tenn. Ct. App. 1987) (holding that a subsequent action was not barred because the initial court did not have jurisdiction over the claim). Thus, the Restatement of Judgments points out:

> The general rule [against relitigation of a claim] is largely predicated on the assumption that the jurisdiction in which the first judgment was rendered was one which put no formal barriers in the way of a litigant's presenting to a court in one action the entire claim including any theories of recovery or demands for relief that might have been available to him under applicable law. When such formal barriers in fact existed and were operative against a plaintiff in the first action, it is unfair to preclude him from a second action in which he can present those phases of the claim which he was disabled from presenting in the first.

Restatement (Second) of Judgments § 26(1)(c) cmt. c (1982).

Lien v. Couch, 993 S.W.2d at 55-56. *See also Ostheimer v. Ostheimer*, No. W2002-02676-COA-R3-CV, 2004 WL 689881, at *5 (Tenn. Ct. App. Mar. 29, 2004), *no appl. perm. appeal filed* ("[C]laim preclusion bars any claims that 'were or could have been litigated' in a second suit between the same or related parties involving the same subject matter.").

The Chancery Court found and held, *inter alia*, that Plaintiff had admitted that the allegations in her Chancery Court complaint were the same allegations raised in her General Sessions Court lawsuit, the same thirteen claims that were dismissed with prejudice. In pertinent part, Tenn. Code Ann. § 27-5-108 provides:

> **27-5-108. Appeal from general sessions court. –** (a) Any party may appeal from an adverse decision of the general sessions court to the circuit court of the county within a period of ten (10) days on complying with the provisions of this chapter.

Tenn. Code Ann. § 27-5-108(a) (2000)[1].

As has been stated by Tennessee's appellate courts: "[o]bviously, the wording of T.C.A. § 27-5-108 means that before such an appeal can be taken, there must have been a final judgment entered in the general sessions court, and an appeal under this statute cannot be had for the review of interlocutory orders,…." *State v. Osborne*, 712 S.W.2d 488, 491 (Tenn. Crim. App. 1986). *Accord Jackson Energy Auth. v. Diamond*, 181 S.W.3d 735, 740 (Tenn. Ct. App. 2005) (stating "the ten-day period for seeking a *de novo* review in the Circuit Court began to run when the General Sessions final judgment was entered, and was not tolled by the petition to rehear."); *Leak v. Goodwill*, No. 03A01-9611-CV-00359, 1997 Tenn. App. LEXIS 461, at *4 (Tenn. Ct. App. July 2, 1997), *no appl. perm. appeal filed*, (stating: "[n]otwithstanding there is no such Rule as to the General Sessions Court, we believe that such a Rule is salutary and conclude the purported appeal from General Sessions Court to Circuit Court was premature and does not properly lie until disposition of the case against AT&T, the other Defendant."). "In Tennessee, a judgment is final 'when it decides and disposes of the *whole* merits of the case leaving nothing for the further judgment of the court.'" *Richardson v. Tennessee Bd. of Dentistry*, 913 S.W.2d 446, 460 (Tenn. 1995) (emphasis in original).

By order entered on February 20, 2007, the General Sessions Court granted Defendants summary judgment and dismissed Plaintiff's claims 1 through 13. Plaintiff then moved to withdraw claim 14, and the General Sessions Court granted Plaintiff a dismissal without prejudice of this sole remaining claim by order entered March 26, 2007. Thus, a final order in the General Sessions case, one that decided and disposed of all remaining claims between all parties leaving nothing for the further judgment of the court, was entered on March 26, 2007. Under Tenn. Code Ann. § 27-5-108(a), Plaintiff had ten days from March 26, 2007 in which to appeal to Circuit Court the adverse decision of the General Sessions Court dismissing claims 1 through 13 with prejudice.

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[1] Tenn. Code Ann. § 27-5-108 was amended in 2008. We quote from the version of Tenn. Code Ann. § 27-5-108 in effect during the relevant time period for the case before us.

Plaintiff did not appeal, but instead waited approximately eight months and then filed a complaint in Chancery Court again raising the same claims 1 through 13 against the same Defendants.

As held by the Trial Court, the doctrine of *res judicata* bars Plaintiff's Chancery Court lawsuit. There is no genuine issue of material fact, and Defendants are entitled to judgment as a matter of law. Given this, we find no error in the Chancery Court's granting of summary judgment to Defendants based upon the doctrine of *res judicata*. Our resolution of this issue pretermits the necessity of determining whether summary judgment would have been proper upon the other two grounds raised.

Conclusion

The judgment of the Chancery Court is affirmed and this cause is remanded to the Chancery Court for collection of the costs below. The costs on appeal are assessed against the Appellant, Betty Lou Graham, and her surety, if any.

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D. MICHAEL SWINEY, JUDGE